

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

KRYSTAL L. FORSGREN, Plaintiff,  vs.  HYDRAULICS INTERNATIONAL, INC., Defendant.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES  Case No. 1:06-CV-158 TS
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Pursuant to Fed.R.Evid. 407, Plaintiff moves to exclude evidence of policies and procedures implemented by Autoliv after the incident at issue in this case on the ground that they are subsequent remedial measures. Autoliv is Plaintiff's employer and is not a party to this case.

Defendant opposes the Motion and argues that under controlling Tenth Circuit case law, *Mehojah v. Drummond*,<sup>1</sup> Rule 407 does not apply to subsequent remedial actions taken by non-parties.

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<sup>1</sup>56 F.3d 1213 (10th Cir. 1995).

In *Mehojah*, the Tenth Circuit held: “‘Rule 407 only applies to a *defendant’s* voluntary actions;’ it does not apply to subsequent remedial measures by non-defendants.”<sup>2</sup> This is now the rule in seven circuits.<sup>3</sup> Further, the Tenth Circuit has held that the rule applies to only actual defendants and does not also apply to obvious but still only potential defendants.<sup>4</sup>

In the present case, Autoliv is not a defendant herein. Because it is a non-defendant, any subsequent remedial measures it took are not excluded under Rule 407.

Plaintiff also argues that Autoliv should not be punished for or discouraged from taking remedial measures. Because it is not a party herein, there can be no issue of any prejudice to Autoliv from admission of the evidence. Plaintiff does not argue she will be prejudiced by admission of any remedial measures taken by her employer. It is therefore

ORDERED that Plaintiff’s Motion in Limine to Exclude Evidence of Subsequent Remedial Measures (Docket No. 40) is DENIED.

DATED October 1, 2009.

BY THE COURT:

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TED STEWART  
United States District Judge

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<sup>2</sup>*Id.* at 1215 (quoting *Pau v. Yosemite Park and Curry Co.*, 928 F.2d 880, 881 (9th Cir.1991) (emphasis in original, other alterations and additional citations omitted).

<sup>3</sup>*Millennium Partners, L.P. v. Colmar Storage, LLC*, 494 F.3d 1293, 1302-03 (11th Cir. 2007)) (collecting cases).

<sup>4</sup>*Mehojah*, at 1215.